

### REMARKS

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action (**Final Rejection**) dated April 17, 2007, the shortened statutory period for response set to expire on July 17, 2007. Accordingly, no extension of time or associated fee is believed due. In the event that the Commissioner determines an extension of time is required, the undersigned hereby petitions for any required extension of time and authorizes the Commissioner to charge the Milbank deposit account 13-3250 for any required extension fee.

#### I. Status of the Claims

Please amend claim 40 as indicated above. Claims 1-56 are now pending in the application, with claims 1-39, 42-46 and 51-56 currently withdrawn from prosecution, leaving claims 40, 41, 47, 48, 49 and 50 presently under examination. Claims 1, 14, 15, 16, 17, 18, 28, 29, 39, 40, 53, 54, 55, and 56 are independent claims.

Applicant acknowledges the Examiner's citation of statutory authority as a basis for claim rejections.

#### II. Rejections under 35 U.S.C. § 102

The Examiner has rejected claim 40 as anticipated by the capped convertible preferred stock described in *Garrity*. *Garrity* discloses a capped convertible preferred stock that is “issued at the same price as the common and pay a cumulative preferred dividend.”

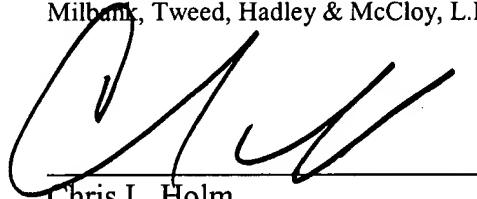
Applicant respectfully submits that in claim 40 a price of an underlying security (which the Examiner equates to the common in *Garrity*) is determined at a first time. Then in claim 40, a discount price of the underlying security (the common in *Garrity*) is calculated as a discount from the price of the underlying security (the common in *Garrity*) at the first time. Then in claim 40, the exchangeable security (which the Examiner equates to the capped convertible preferred stock in *Garrity*) is issued at the first time and at the discount price. However, it is clear and

expressly stated in *Garrity* that the capped convertible preferred stock is issued at the same price as the underlying common. Thus, *Garrity* entirely fails to disclose claim 40. Because *Garrity* specifically describes the price of the capped convertible preferred stock at issue is the same as the price of the common, applicant respectfully submits it would not have been obvious to modify *Garrity* and issue the capped convertible at a discount. Similarly, there is no teaching, suggestion or motivation for such a modification in *Garrity* or the relevant prior art.

III. Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

Respectfully submitted,  
Milbank, Tweed, Hadley & McCloy, L.L.P.



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